

Re. : Response to Final Office Action mailed June 2, 2009
Appl. No. : 10/789,581
Filed : February 26, 2004

REMARKS

The Office Action allowed Claims 28, 29, 52 and 54-58, but rejected Claims 59-66. As discussed below, Applicant believes that all of the pending claims are in condition for allowance.

I. Response to rejection under 35 U.S.C. § 103(a)

The Office Action rejected Claims 59-66 under 35 U.S.C. § 103(a) over United States patent application publication no. 2002/0176546 by Dietz et al. in view of United States patent no. 7,043,266 by Chaturvedi. Applicant respectfully traverses this rejection at least because the proposed combination of the cited references does not make sense and because *Dietz* teaches away from the combination.

A. The *Dietz* reference identifies a specific problem: what to do when someone needs to put down the telephone handset during a telephone conversation.

The *Dietz* reference explains that, during a telephone conversation, a user may need to put the telephone handset down to deal with a distraction and/or to perform a task that requires both hands.¹ Unfortunately, by putting the handset down, the telephone user may miss part of the conversation.

B. The *Dietz* reference identifies two prior art options for addressing this problem and disparages both options.

The *Dietz* reference identifies two prior art options that could be used when someone needed to put down the telephone handset during a telephone conversation: placing people on hold and using speaker phones. It disparages both.

¹ “There are brief moments when a user of a telephone handset is distracted from a telephone conversations. Examples include interruptions by nearby people, loud background noises, or just unintentional distractions. In many of these cases, the user intentionally removes the handset from his or her ear to perform some other task that requires the use of the hand holding the handset.” *Dietz*, ¶ [0002].

Re. : Response to Final Office Action mailed June 2, 2009
Appl. No. : 10/789,581
Filed : February 26, 2004

1. The Dietz Reference disparages placing people on hold.

As a first option, the *Dietz* reference explains that, previously, one could interrupt the other parties and place them on hold.² The *Dietz* reference teaches away from this option because (1) “the user may not want to notify the caller of the need to do something else,” (2) it “requires special equipment that may not be available with all handsets,” (3) “placing the call on hold will result in loss of information” if the incoming call is a recorded message, and (4) often “the need for a ‘hold’ cannot be anticipated, or is not realized until after the fact.”³

2. The Dietz Reference disparages speaker phones.

As a second option, the *Dietz* reference explains that, previously, one could use a speakerphone.⁴ The *Dietz* reference teaches away from using speaker phones because (1) speaker phone calls have degraded quality and (2) because their speakers are loud enough to allow potential eavesdroppers to hear the conversation.⁵

C. The Dietz Reference proposes a play-back system as an alternative.

As an alternative to placing people on hold and using speaker phones, the *Dietz* reference proposes its telephone handset 100. As with normal telephone calls, a user holds the handset 100 to his or her ear.⁶ The handset 100 includes various features that facilitate play-back functionality when the user moves the handset 100 away from his or her ear.

In further detail, the handset 100 includes a proximity sensor 141-142, a processor, and a buffer 160:

² “In one method, the incoming call is placed on ‘hold.’ This requires that the user notifies the caller to stop the conversation, until the hold is removed.” *Dietz*, ¶ [0002].

³ *Dietz*, ¶ [0003].

⁴ “The other method uses a ‘speaker phone.’” *Dietz*, ¶ [0004].

⁵ “The other method uses a ‘speaker phone.’ This approach has two problems. First, the quality of a speaker phone call is generally degraded. Second, with a speaker phone, the call is audible by all people within range of the speaker phone. This may not always be desired.” *Dietz*, ¶ [0004].

⁶ “In this stage, these two pointers are coincident, i.e., the play-back pointer ‘tracks’ 211 the record pointer.” *Dietz*, ¶ [0016].

Re. : Response to Final Office Action mailed June 2, 2009
Appl. No. : 10/789,581
Filed : February 26, 2004

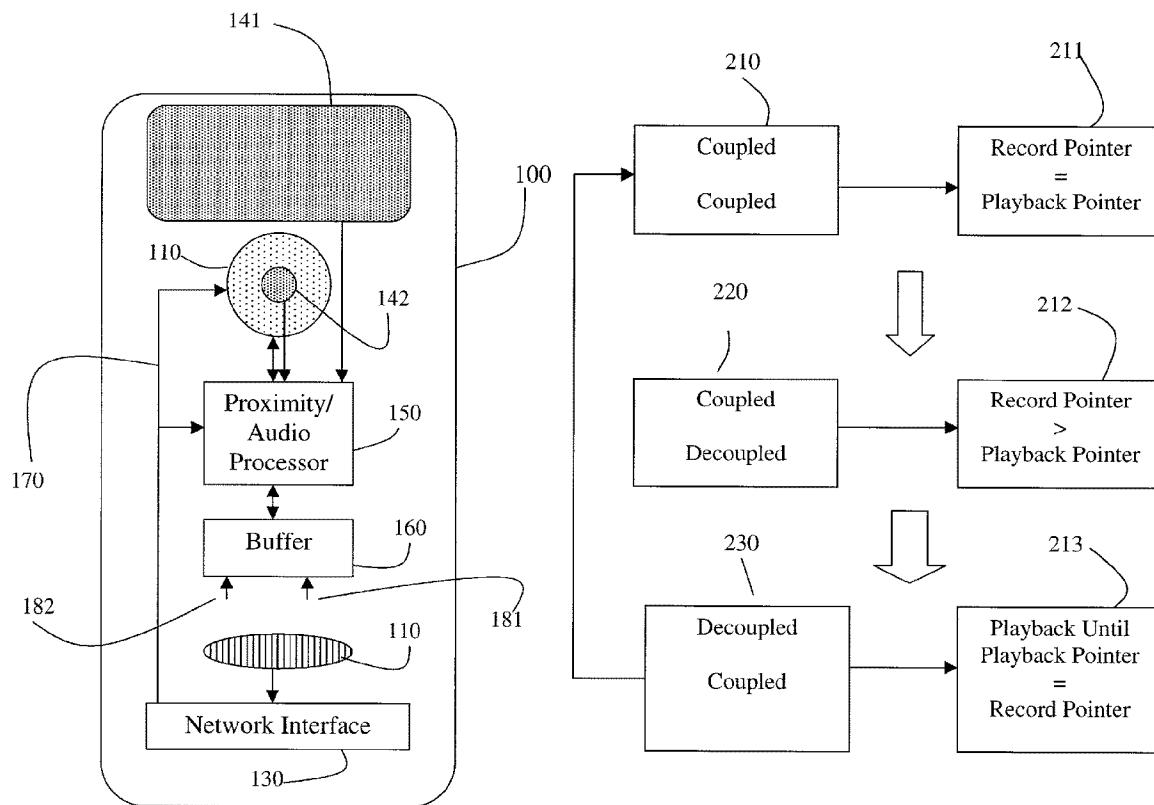


Fig. 1

Fig. 2

The buffer 160 is circular with two pointers: a record pointer 181 and a play-back pointer 182.⁷

As shown in block 211 of Figure 2, during initial use (when the proximity sensor 141-142 detects that the user is holding the handset 100 to his or her ear), the record pointer 181 and the play-back pointer 182 are aligned.⁸ As shown in block 212, when the proximity sensor 141-142 detects that the user has removed the handset 100 from his or her ear, the location of the playback pointer 182 is frozen, while the record pointer 181 continues ahead in the circular buffer 160.⁹

When the proximity sensor 141-142 detects that the user has returned the handset 100 to his or her ear, the handset plays the audio in the buffer, beginning where the play-back pointer

⁷ "When the handset is in normal use 210, the user's hand capacitively couples the large ground plane 141 to the small electrode 142 via the user's ear." Dietz, ¶ [0016].

⁸ "In this stage, these two pointers are coincident, i.e., the play-back pointer 'tracks' 211 the record pointer." Dietz, ¶ [0016].

⁹ "When the processor detects a de-coupling or removal from the ear 220, the play-back pointer 181 is fixed in place while the record pointer continues to advance 212." Dietz, ¶ [0017].

Re. : Response to Final Office Action mailed June 2, 2009
Appl. No. : 10/789,581
Filed : February 26, 2004

182 was frozen—or five seconds earlier to provide context.¹⁰ The handset 100 plays this audio in a time-compressed manner,¹¹ which eventually realigns the play-back pointer 182 to the record pointer 181.¹²

D. It would defy common sense to use the *Dietz* reference's ear-detecting play-back system with push-to-talk messages.

As shown above, the *Dietz* reference disparages speaker phones because their speakers allow potential eavesdroppers to listen to the conversation. Accordingly, the *Dietz* handset 100 must be held to one's ear to hear what is being said. Because one wouldn't be able hear what was being said when the handset 100 is removed from one's ear, the handset 100 buffers the incoming audio in such situations. The handset 100 then plays the buffered audio when the handset 100 is returned to the ear.

Push-to-talk messages can arrive at any time. Accordingly, to accommodate push-to-talk messages, the *Dietz* handset 100 would have to be held against one's ear at all times (which would defy common sense) or would have to be further modified to include a speaker phone (which *Dietz* teaches away from because speaker phones permit eavesdropping). Either way, it would not be obvious to use the *Dietz* reference's ear-detecting play-back system with push-to-talk messages.

Accordingly, Applicant requests that the rejection of Claims 59-66 be withdrawn.

¹⁰ “Because of the buffering, play-back can optionally commence at a time preceding the time marker, for example, the play-back pointer can be stepped-back five seconds in time, before starting play-back so that context of the content can be conserved.” *Dietz*, ¶ [0019].

¹¹ “The play-back is performed in a time-compressed manner.” *Dietz*, ¶ [0018].

¹² “When, the user later re-applies the handset to the ear to resume the coupling, the stored audio signal is played back from the place indicated by the play-back pointer at a higher rate until the play-back pointer ‘catches-up’ 213 with the record pointer. That is, the play-back audio signal is resynchronized with the real-time audio signal received via the network interface 130.” *Dietz*, ¶ [0017].

Re. : Response to Final Office Action mailed June 2, 2009
Appl. No. : 10/789,581
Filed : February 26, 2004

CONCLUSION

Applicant submits that Claims 28, 29, 52 and 54-66 are allowable over the cited references and are in condition for allowance. Accordingly, Applicant requests that a Notice of Allowance be promptly issued.

If any further impediments to allowance of this application remain, the Examiner is cordially invited to contact the undersigned by telephone so that these remaining issues may be promptly resolved.

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication to Deposit Account No. 23-3178: (1) any filing fees required under 37 CFR § 1.16 if such fees have not otherwise been paid; and (2) any patent application and reexamination processing fees under 37 CFR § 1.17 if such fees have not otherwise been paid. The Commissioner is hereby authorized to credit overpayment of any fees that may be applicable to this communication to Deposit Account No. 23-3178. If any additional extension of time is required, but has not been requested, please consider this a petition for the additional extension of time and charge any additional fees that may be required for the additional extension of time to Deposit Account No. 23-3178.

DATED this 29th day of July, 2009.

Respectfully submitted,

/Ryan N. Farr/ Reg. No. 52,882

Ryan N. Farr
Registration No. 52,882
Attorney of Record

Customer No. 22,913

WORKMAN NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, Utah 84111
Telephone: (801) 533-9800
Facsimile: (801) 328-1707
E-mail: RFarr@wnlaw.com